

MATSON CASE

DRAWER 4 IMPORTANT LAW CASES



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Abraham Lincoln's Important Cases

Matson Case

Excerpts from newspapers and other
sources

From the files of the
Lincoln Financial Foundation Collection

Lincoln Counsel For Slave Owner

Early Days As Attorney Are Recalled

SPRINGFIELD, Ill.— Abraham Lincoln freed the slaves as every schoolboy knows.

But what every schoolboy doesn't know (and most grown folks as well) is that Lincoln—the Great Emancipator—once served as legal counsel for a slave owner from Old Kentucky.

Lincoln was reputed a shrewd lawyer and won many cases. But he lost this one.

Worse still, his client was so enraged at the outcome that he departed for Kentucky the night after the trial without the formality of paying his attorney any fee whatsoever!

This all occurred back in October 1847, when Lincoln was a practicing attorney "riding the circuit" in Illinois just before he left for Washington to take his seat in congress.

Trial Is Recalled

Circumstances surrounding the trial were recalled today as the nation prepared to celebrate tomorrow the 130th anniversary of Lincoln's birth.

Every year since 1843, one Robert Matson had been bringing his slaves from Kentucky to cultivate his farm in Coles county, Illinois. After the harvest he took these slaves back to Kentucky but kept one slave, Anthony Bryant and his family on the Coles county farm to keep down the weeds and look after the stock.

Matson, in keeping Bryant on his farm near Charleston, Ill., was violating the Illinois law, which provided at that time that no Negro could remain in the state without a certificate of freedom. Violators were subject to a \$500 fine.

When summer came in the year of 1847, Bryant and his family were disturbed by rumors that "Massa Matson" planned to sell them to plantation owners in the deep south—a fate dreaded by every slave. So eventually they dropped their tools and fled the farm.

Sympathizers and Slaves.

Two Coles county men, Gideon Ashmore and Hiram Rutherford, were touched by the plight of Bryant and his family. They gave them shelter and protection.

When Matson learned of this he was very wroth and sued the two men to recover his human "property."

The case was tried before Justice of the Peace William Gilmore in Coles county. Gilmore ruled that since the Negroes were in Illinois without certificates of freedom they must be turned over to the sheriff and sold for the cost of their keep, all in accordance with the law.

The Bryants stayed in jail for two months and then Ashmore and Rutherford filed a petition for habeas corpus in Coles county circuit court seeking to win the slaves their freedom.

The case was set for trial in Coles county circuit court and State Supreme Court Justice William Wilson accompanied Circuit Judge Treat to Charleston to hear it.

Lincoln Engaged as Counsel.

Rutherford, seeking the best legal talent available, then tried to engage Mr. Lincoln as counsel but Matson had beaten him to it. The slave owner had retained Mr. Lincoln so Ashmore and Rutherford engaged Attorneys Ficklin and Constable to represent them. Attorney Linder joined Lincoln in behalf of Matson.

Meanwhile, Matson had filed suit for \$2,500 damages against Rutherford for taking Matson's slaves away from him.

And so the case came to trial before Justice Wilson and Judge Treat. When the arguments, citations of authorities and other legal maneuverings were over, the court ruled that the slaves be discharged from the sheriff's custody and "from all servitude whatever from henceforth and forever."

This defeat so disgruntled the fiery Matson that he left that night for Kentucky nor did he pay Lincoln's fee before his departure.

Wins Another Case.

This setback for Lincoln was slightly offset, however, as he won a verdict in another suit tried in the Coles county tribunal on the same day. Lincoln's client was awarded \$215 damages.

The following day, Lincoln started homeward to Springfield. He took two days to make the trip. On arrival, he hurriedly started winding up his affairs. He leased his home for one year to C. Ludlam for \$90 for the entire 12-month period, reserving one up-

stairs room in which to store the family furniture.

Then on the following Monday, Lincoln left for Washington, via Kentucky. He arrived in Lexington, Ky., Nov. 3 and remained there until Nov. 25 when he left for the national capital, arriving there Dec. 2.



From the Louis A. Warren
Lincoln Library and Museum

FIGURE 5. The 1882 edition of Thayer's expanded book featured on the cover, of all things, a football player.

We may never know. In the end, Thayer did not mention any romance in his book. On July 26, 1862, Browning saw President Lincoln at the White House and "read him a portion of the letter." Lincoln asked him to leave the letter with him. Browning did so, and thus the letter now appears in the Abraham Lincoln Papers at the Library of Congress. As far as is known, Lincoln never replied to Thayer's letter. *The Pioneer Boy, and How He Became President* appeared in 1863 and was a great success. Seven thousand copies had been printed by the end of 1863, and eighteen thousand were in print in 1864. An 1865 edition noted that twenty-eight thousand copies had been printed. He expanded the book in 1882 and sold about sixty thousand copies by the end of the century. Though no longer read, Thayer's book was, for a time, the most complete biography of Lincoln, and its rags-to-riches theme was clearly a formula for successful writing in Lincoln's century.

Some New Light on the Matson Slave Case

Of the handful of Abraham Lincoln's legal cases which are widely known, the Matson slave case is by far the most controversial. The anomaly of the Great Emancipator's involvement on the side of a slaveholder in this fugitive slave case has vexed and puzzled historians for decades. Early biographies tended to ignore it altogether. Later, some writers tried to explain it away by suggesting that Lincoln had so little taste for this species of litigation that he performed poorly in court, lost the argument, and thus allowed the fugitives to go free. Historians in recent years have been content to admit that Lincoln was a complex man, not always consistent, and to emphasize the rapid growth of his anti-slavery feelings in the later years of his life. All of this literature, however, has been consistent in focusing on the lawyer's personal moral dilemma. The legal issues involved

in the case have been substantially ignored.

The Matson slave case was a hearing for a writ of *habeas corpus* in behalf of Jane Bryant and her four children. They were the slaves of Robert Matson, a Kentucky planter who owned land in Coles County, Illinois. Matson brought slaves to Illinois to farm the land every year but always returned them after harvest, thus avoiding any claim that his slaves were permanent residents on Illinois's free soil and, therefore, entitled to freedom. Matson employed Jane's husband, Anthony, as a permanent overseer on the Illinois farm. This was strictly legal, for Anthony was a free man.

In 1847 Jane Bryant had a serious falling-out with Matson's white housekeeper, who may have been the master's mistress. Anthony began to fear that the housekeeper might persuade Matson to sell Jane and the children South. The housekeeper had threatened to do so, and she appeared to be in a position to make her threat stick. Anthony sought the help of Gideon M. Ashmore and Hiram Rutherford, local antislavery men. They kept Jane and the children at Ashmore's inn in Oakland, Illinois. Matson sought the remedy of law to gain the return of his property. He employed attorney Usher F. Linder, who managed to have the slaves confined to the jail in Charleston, the county seat of Coles County. Ashmore and Rutherford obtained a writ of *habeas corpus*, demanding Illinois's reasons for confining the fugitives, and a hearing was held before Judges Samuel H. Treat and William Wilson on October 16, 1847.

Lincoln came to Coles County and was also engaged on Matson's side. The opposing attorneys, Orlando B. Ficklin and Charles H. Constable, argued that the Northwest Ordinance of 1787 and the Illinois Constitution made the slaves free by virtue of their residence on the soil of a state where slavery was illegal. Lincoln apparently argued that Jane Bryant was a seasonal worker following a long-accepted custom and was in no way a legal resident of the state. The judges ruled in favor of the slaves and declared them free.

The aforementioned facts in the case are common knowledge. New light comes from Don E. Fehrenbacher's *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978). Professor Fehrenbacher explains that the legal difference between "domicile" and "sojourn" in a free state was a commonplace distinction in American jurisprudence in Lincoln's day. In Pennsylvania, for example, a master could remain in the state with his slaves for six months without affecting the legal status of the slaves. New York allowed a nine-month sojourn with slaves. In 1843 the Illinois Supreme Court had affirmed a master's right of sojourn in the state with his slaves, saying that to deny it would "tend greatly to weaken, if not to destroy the common bond of union amongst us." In the 1840s, however, New York and Pennsylvania revoked their laws allowing sojourn with slaves, and courts in other Northern states began to rule that slaves were freed merely by touching free soil. In the Matson case, some of Illinois's judges followed the new trend.

John J. Duff argued in *A. Lincoln: Prairie Lawyer* (New York: Rinehart, 1960) that Lincoln performed well in the case and that Ficklin and Constable performed poorly. All they had to do to assure her freedom, Duff claimed, was to cite as precedent the decision in *Bailey vs. Cromwell* — in which Lincoln himself had gained freedom for a Negro girl named Nance by arguing that the Illinois Constitution and the Northwest Ordinance prevented her being a slave in the state! Duff's argument betrays his lack of understanding of the issues in the Matson case. The issues in *Bailey vs. Cromwell* were altogether different. Nance was a resident of Illinois, an indentured servant rather than a slave. The Supreme Court ruled that Illinois law presumed a person free without any proof to the contrary, and Nance's "owner" could not produce that proof. The important point is that she lived in Illinois. *Bailey vs. Cromwell* had nothing to do with "domicile" and "sojourn."

The real marvel in the case is the reasoning of Treat and Wilson. Both men had been members of the Illinois Supreme Court in 1843, when it affirmed the right of sojourn with slaves in the state!

In the Matson slave case, Lincoln and Linder had the law on their side but not the judges.

From the News Bureau
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Mailed 11/30/81

URBANA, Ill. -- Lincoln, as every schoolchild knows, was the president who freed the slaves.

But the Great Emancipator defended the cause of slavery at least once in his life, in a celebrated trial held in Charleston, Ill., in 1847.

The event is recalled in "On the Illinois Frontier," a collection of letters and journals by Dr. Hiram Rutherford, Lincoln's friend and fellow Abolitionist, who opposed him in the Matson slave trial. The book is edited by George Hendrick, a professor of English at the University of Illinois, and his wife, Willene, a nurse, and published this month by Southern Illinois University Press.

When Rutherford was an old man, he observed, "Of the subsequent history of Mr. Lincoln we are all familiar, and while I would detract nothing commendable therefrom, still justice demands that it be said that neither his speeches nor his conduct at and during this litigation was worthy of his name and subsequent fame."

(MORE--Pioneer Doctor)

Rutherford was an outspoken Abolitionist and Oakland's first physician. The doctor's neighbor, Robert Matson, a Kentucky planter, brought his slaves up from the South to work his Illinois farm in the summer. Five of the slaves learned they were to be sold and fled to Rutherford for protection.

Matson sued for the return of his property, citing Illinois's Black Laws, which made it a crime to harbor "a Negro or mulatto" without a certificate of freedom.

In later years, Rutherford recalled, "I rode down to Charleston to hire a lawyer. I had known Abraham Lincoln several years, and his views and mine on the wrong of slavery being in perfect accord, I determined to employ him.

"I found him at the tavern sitting on the veranda, his chair tilted back against one of the wooden pillars, entertaining the bystanders and loungers gathered about the place with one of his irresistible and highly-flavored stories."

To Rutherford's great indignation, he found that Lincoln had already agreed to represent Matson -- the only time Lincoln ever defended slavery in a law case.

(MORE--Pioneer Doctor)

Rutherford hired other lawyers, won the case and the slaves were freed, but he never forgave Lincoln for having compromised his antislavery ideals. He took a measure of satisfaction in noting that after the trial, Matson fled the area and never paid Lincoln his fee.

When Rutherford returned to Oakland to tell the slaves they were free, "they sang and laughed and prayed and hugged one another all at the same time. No wonder, poor things, their redemption was now complete. They were in a free state, no longer slaves, but free, in all ways which that word implies," according to an account in the Oakland Weekly Ledger.

Rutherford's indignation at Lincoln's defense of "the strong against the weak" and the doctor's own vivid account of pioneer life are detailed in the Hendricks' book.

When Rutherford left Pennsylvania in 1840 to seek his fortune in Illinois, the price of "a first rate farm" in Oakland was \$8 an acre, pork was 3 cents a pound and a large venison roast could be had for 75 cents. Oats were 20 cents a pound; wheat, 50 cents.

(MORE--Pioneer Doctor)

The doctor charged \$5 to deliver a baby, \$2 to set a bone and 50 cents for a dozen quinine pills -- which were much in demand since malaria was common in swampy Illinois.

"Illenois is said by some to be the hottest, the coldest, the wettest and the driest country in the United States. Still crops seldom fail, especialy from drought. The soil is so deep that vegetation cannot burn out," he wrote.

His eloquent letters recount the hardships of life in a frontier community. "The calls were numerous and the extent of territory covered ... embraced half a degree of latitude and longitude; the roads ... were mere deerpaths, and the streams were allowed to flow on their winding to the sea, unvexed by bridges or ferries"

Three years after settling in Oakland, he could boast, "Sickness has been pretty abundant. I have never done so much in one summer before, & yet I have lost but 2 patients in all my practice since my return. In August I booked about \$250."

(MORE--Pioneer doctor)

But money was scarce on the frontier, so the doctor's accounts often were settled in kind -- corn, wheat or chickens.

Though Rutherford had great success treating the pioneer families of Oakland, he was helpless when a fever of unknown origin struck and killed his young wife, Lucinda. Busy tending his patients, he did not realize the severity of her illness until it was too late.

His letters reveal his grief.

"When hope was no more I could not tell her that she would die. I have often pronounced that word to the dying, with but little emotion, but to her I could not say it. I had brought her to a far country there to die amidst strangers; & no mother or brother to weep over her passing spirit. I only was there to comfort her."

-dw-

Shocker! Lincoln Defended A Slave Owner in Court

Abraham Lincoln took virtually any case offered to him as a lawyer — once he even tried to help a slave owner get his slaves back!

It happened in 1847, when Lincoln was practicing law in Illinois. A

family of slaves belonging to farmer Robert Matson — who'd brought them north from Kentucky to harvest some crops — escaped and took refuge with an innkeeper and a doctor. Matson sued the two, saying the slaves still belonged to him.

Lincoln, who was already a highly respected lawyer, was approached by both sides for his services. Strangely, he accepted the offer of the slave owner. Luckily for the slave family, Lincoln lost the case.

In a similar case six years earlier, Lincoln had won the freedom of a slave girl named Nance. She'd been sold to a man in Illinois, and in court Lincoln argued that she was entitled to her freedom, since slavery was illegal in the state.

The case went all the way to the state Supreme Court, which finally agreed with Lincoln.

Slavery wasn't the only issue on which Lincoln found himself straddling the fence.

In 1853 he represented the Illinois Central Railroad, which claimed McLean County had no right to

tax its property. Lincoln took the case all the way to the state Supreme Court, and won.

But when the railroad paid him just \$200 of his \$2,000 legal fee, Lincoln got the county to issue an order seizing the railroad's property until they paid up.

Lincoln's legal experience ran the gamut from arguing corporate law to defending petty thieves. He successfully defended a man who shot some boys he caught raiding his watermelon patch — and lost another case in which his client stole a \$3 hog.

In a far more weighty case Lin-

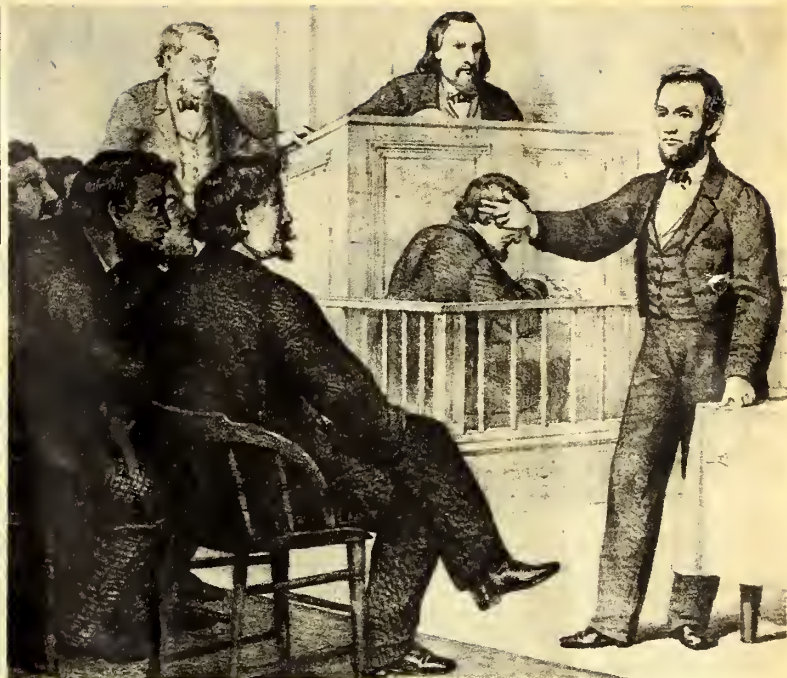
coln, acting as a court-appointed prosecutor, sent a rapist to jail for 18 years.

Lincoln's last case came the same year he was elected President, in 1860. He represented the plaintiff in a patent infringement case. But Lincoln had no intention of quitting law forever.

On the afternoon of April 14, 1865, he mentioned to his wife that his dream was to return to Illinois and open a law office.

That night, John Wilkes Booth snuffed out Lincoln's dream forever.

— WEBB GARRISON



YOUNG LINCOLN shown defending a man in court.



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The Story of the Dr. Hiram Rutherford Home

The Dr. Hiram Rutherford Home was given the Oakland Landmarks, Inc. in April, 1969, by a granddaughter, Mrs. Harriet Rutherford Crawford. This new historical group started immediately to restore the house, inside and out. Around \$2500 has been spent to date on the restoration and the items relating to the refurnishing. Many pieces of furniture and accessories have been given or loaned. All will be properly catalogued and posted just as soon as we can do it properly.

Things that we have done include:

- Repaired Summer Kitchen Fireplace
- Restored part of Brick Floor in Summer Kitchen
- Replaced Summer Kitchen Wall Painted outside of building
- Painted woodwork and papered whole house
- Built a new fireplace in Red Room
- Built "dry sink" around modern sink
- Framed "hole in wall" to show early construction
- Uncovered old stencil in children's room.
- Removed paper and paint from solid walnut wall in entrance.
- Tried to furnish home in the comfortable fashion of the time.

Dr. Hiram Rutherford came from Pennsylvania to Independence (Oakland) in 1838. He was 23 years of age. He owned a horse, a saddle and had \$10. He was a young doctor who left home and family to make his fortune in the "New West". He wrote long letters back to relatives about the splendors of the New West. He said the roads "were first rate" although they were mostly deerpaths.

The young doctor rode day and night caring for the people of the prairies and often crossed raging streams to get to their homes. Many times the panther screamed and the wolf howled in the distance. When he had leisure time, he read and smoked a corn cob pipe and did lots of thinking and writing.

He went back to Pennsylvania in 1843 and married Lucinda Bowman. She returned with him to her new home much against the wishes of her family. She wrote her mother that she had a good home, one of the best in Independence, and that the doctor had promised her a visit home in three years.

But lots of things happened in three years. A son, John, a healthy baby, was born in July, 1844, and it seemed that she was filled with happiness. Lucinda, always religious

and of the Methodist faith, attended a camp meeting near Isabel when the baby was only a few months old. She slept on the ground with other women and took cold and a fever. Riding home on horseback and carrying the baby in her arm caused her arm to swell and in a few days she was very ill and lingered only a week, leaving her baby and a sorrowing, remorseful, young husband.

Lucinda was buried the next evening while only two neighbors knelt by the graveside and sang a hymn. The only minister and everyone else in town was ill with the same sickness.

Later the young husband wrote that Lucinda's grave, in the Oakland Cemetery, "was in the deep wild wood, the broad oak waves overhead and the roses of summer bloom over her head". He spent his spare time with his young son and started plans for a new home.

In November, 1846, he wrote that he suffered a severe injury to the middle finger of his right hand in raising "my new house." In February, 1847, he wrote he moved bag and baggage into his new house. "My house cost me \$1600," he said "I built it to please myself and of course it cost money." That, of course is this house, that is being restored by Oakland Landmarks, Inc. Lucinda never lived in this house, but we think we have to tell her story, for her story was very much a part of Dr. Rutherford's pioneer history. Her son, John, of course, was raised here with Dr. Rutherford's second family.

In 1847, while attending the Matson Slave Trial in Charleston, Dr. Rutherford noticed a pretty young girl, Harriet Hutcherson, and said that he "liked the turn of her ankle." She was visiting Charleston and attended the much publicized trial. The doctor courted the pretty girl and in April, 1848, they were married in Springfield and they drove overland to their home in Oakland, taking two days to make the trip.

They began their residence in this home, the first two-story residence in Oakland, and she made a home for the doctor and his motherless son. Nine other children were born in this home, two dying in infancy.

Dr. Rutherford after a full life, died in this home in 1900, aged 85. The body lay in state here and he was laid beside Lucinda after services at the Methodist Church. Six of his sons were pallbearers. Grandmother Harriet lived until 1914, and she, too, was carried from here to

the Oakland Cemetery, where the family grave site is now enclosed in an iron fence.

The Matson Slave Trial concerned a suit against Dr. Rutherford and Gideon Ashmore, both well-known abolitionists, who "harbored" a Negro family to prevent them from being taken back to Kentucky and sold. Matson owned the slaves, and hired Abraham Lincoln to be his lawyer. It is the only case of Lincoln defending the side of the slave owner and he lost the case, perhaps because he had no sympathy for the slave owner.

The Negro family was befriended by both Dr. Rutherford and Mr. Ashmore. It is known that they were harbored in the Ashmore Tavern, just across the street where the McCall Store is. This tavern was the first building in Oakland (Independence) and was constructed of logs and was a stopping place for travelers in the early 1830's and '40's.

The doctor's office was in the little building across the street. Also, a large barn was back of it. The doctor's horses and the milk cow were kept there.

Probably no name in the history of Oakland was so familiar to all the people during the 1800's, as the name of Dr. Hiram Rutherford. The many times that he slept on his faithful horse as he threaded his way among the hills or waded through the swamps to see his patients were never forgotten by the pioneer families and their respect for him will always be remembered.

Hiram and Lucinda were grandparents of H. J. Rutherford, Oakland and Evah Shepherd of Santa Cruz, California.

Hiram and Harriet were grandparents of Harriet Rutherford Crawford and the late Elizabeth Zimmerman, both of Oakland, Eugenia Rutherford Nichols of Tuscola; Paul Valodin Rutherford of Frankfort, Kentucky and Wilson Rutherford of Alhambra, California.

WE WANT TO STRESS ONE IMPORTANT FACT — This project is NOT finished. We have lots of plans for the future. No particular period has been followed, since members of the Rutherford family have lived in the home through primitive, revolutionary and fairly modern times.

The Oakland Landmarks, Inc., have restored this "landmark" not only to honor Dr. Hiram Rutherford, an outstanding Oakland Pioneer, but as a reminder of all the pioneers who made our country possible.

A beautiful home and well preserved — Hazel Davis



